CHIN CHENG HONG v. HAMEED & ORS.

[C. A. (Mathew C.J., Wilson & Buhagiar JJ.)
April 7, 1954]

[Ipoh — F.M. Civil Appeal No. 16 of 1952]

Land Code — Registrable interest — Whether an agreement for the sale of land creates any estate or interest in land.

In this case the 1st, 2nd, 3rd and 4th respondents were partners. During the Japanese occupation a piece of land was acquired by the partnership and registered in the name of the 1st respondent. On January 20, 1948 the 1st respondent entered into an agreement with the appellant for the sale of the land. Subsequently on May 27, 1948 a caveat was presented by the 2nd and 3rd respondents. The appellant brought an action for specific performance of the agreement. The trial judge refused specific performance but assessed damages for breach of contract. On appeal it was argued that as the appellant at the date of the agreement sued on had no notice of the equitable claims of the respondents to the property and had no reason for supposing that the first respondent was not the legal and beneficial owner of the property, the appellant was entitled to be treated as a *bona fide* purchaser for value of the property without notice of the equity claimed by the remaining respondents.

Held: (1) the agreement for the sale of the land was non-registrable and did not create any interest in the land; (2) the contractual right of the appellant cannot override the registrable interest of the 2nd, 3rd and 4th respondents.

Cases referred to:—

(1) *Chin Cheng Hong v. Hameed & Ors.* (1953) M.L.J. 135.

(2) *Haji Abdul Rahman v. Mohamed Hassan* (1917) A.C. 209, pp. 216, 215; 1 F.M.S.L.R. 290, pp. 298, 296.

(3) *In re Registration of Caveat* (1908), Innes 114.

COURT OF APPEAL.

F. G. Charlesworth for the appellant.

B. K. Das for the 2nd, 3rd and 4th respondents.

1st respondent no appearance.

Mathew C.J.: — This is an appeal against a decision refusing specific performance of a contract of sale in respect of a piece of land in the town of Ipoh, Certificate of Title No. 7682 for Lot 993N, which the first respondent sold to the appellant.

The facts in this case, with one exception are identical with those in Federation Civil Appeal No. 15 of 1952[1], in which the parties to this appeal were also concerned. The judgment of this Court in that appeal is reported in (1953) M.L.J. p. 135. In this case the subject-matter of this appeal, the agreement for sale was made on 20th January, 1948, and a caveat presented by the 2nd and 3rd respondents on 27th May, 1948. In the former case the agreement for sale was made on 30th November, 1948, a caveat having been presented by the 2nd and 3rd respondents on 26th May, 1948 and registered the following day.

Mr. Charlesworth for the appellant has argued this appeal on the assumption that the Court was correct in holding (in Civil Appeal No. 15 of 1952[1]) that the property in question was partnership property, and that the 2nd, 3rd and 4th respondents had registrable interests in the property. He relied solely on ground of appeal No. 8 which reads:—

"In any event, since the appellant, at the date of the agreement sued on, namely the 20th January 1948, had no notice of the equitable claims of the respondents to the property and no reason for supposing that the first respondent was not the legal and beneficial owner of the property, the appellant was entitled to be treated as a *bona fide* purchaser for value of the property without notice of the equity claimed by the remaining respondents."

Mr. Charlesworth's argument was based on the submission that the appellant and the 2nd, 3rd and 4th respondents both had equitable estates in the property. A search of the register on 20th January, 1948 did not disclose the 2nd, 3rd and 4th respondents' registrable interest, and therefore the appellant should be regarded as a *bona fide* purchaser for value of the property without notice of the equity claimed by the 2nd, 3rd and 4th respondents.

The short point in this appeal is whether the agreement for the sale of land made on the 20th January, 1948, created an estate or interest in the land which should be given priority over the 2nd, 3rd and 4th respondents' registrable interest. The agreement is non-registrable and does not create an interest in the land. It has value only as a contract. Whether the agreement gave the appellant an interest in the land capable of being protected by a caveat does not in my view require to be considered. The position was that the appellant had contractual rights under the agreement of 20th January, and the 2nd, 3rd and 4th respondents had a registrable interest in the land. I can see no reason for giving effect to the purely contractual rights of the appellant by over-riding the registrable interest of the 2nd, 3rd and 4th respondents. As was pointed out in *Haji Abdul Rahman v. Mohamed Hassan*[2]:—

"It seems to their Lordships that the learned Judges, in these observations, have been too much swayed by the doctrines of English equity, and not paid sufficient attention to the fact that they were here dealing with a totally different land law, namely, a system of registration of title contained in a codifying enactment."

I would dismiss this appeal with costs. Deposit to be paid out to respondents towards their taxed costs.

Wilson J.: — I have had the opportunity of reading the judgments of the learned President and of Mr. Justice Buhagiar. I have nothing to add. I would dismiss this appeal with costs.

Buhagiar J. : — We are concerned in this appeal with a piece of property held under Certificate of Title No. 7682, which the appellant agreed to buy from the first respondent. Another piece of property in contention between the same parties formed the subject matter of another case in which judgment was given by this Court (Civil Appeal No. 15 of 1952[1]) and which is reported in (1953) M.L.J. 135.

The facts in this case are the same as in the other case except that in this case the agreement for the sale of the land in question between the first respondent and the appellant was made on the 20th January, 1948, that is, *before* a caveat was presented by the second and third respondents and registered against the Certificate of Title in question — this was on the 27th May, 1948.

In this appeal Mr. Charlesworth, for the appellant, relied only on one ground of appeal, that is, that contained in paragraph 8 of the Memorandum of Appeal, which is as follows :—

"8. In any event, since the Appellant, at the date of the Agreement sued on, namely the 20th January, 1948, had no notice of the equitable claims of the respondents to the property and no reason for supposing that the first respondent was not the legal and beneficial owner of the property, the appellant was entitled to be treated as a *bona fide* purchaser for value of the property without notice of the equity claimed by the remaining respondents.".

Mr. Charlesworth, for the appellant, accepted (and it was so held in the other appeal on the same facts) that: (a) The land was purchased with partnership money;

(b) The land was partnership property; and

(c) That the 2nd, 3rd and 4th respondents had a *registrable interest in the land.*

He submitted that on the 20th January, 1948, the position as between the parties was as follows: the legal estate was in the 1st respondent in whose name the land was registered; the other respondents were beneficial owners and had an equitable estate in the land, and the appellant, by virtue of the agreement had also an equitable estate in the land. He argued that between these two equities, that is, that of the appellant and that of the 2nd, 3rd and 4th respondents, that of the appellant should prevail.

It is settled that the 2nd, 3rd and 4th respondents had a registrable interest, and if the appellant has also a registrable interest then the question of two equities arises. It is important in the first place to consider what was the effect of the agreement of the 20th January, 1948, by which the 1st respondent agreed to sell the land in question to the appellant. This agreement is a non-statutory and non-registrable instrument; such instruments do not create an estate or interest, legal or equitable, in the land but create a contractual right, a personal right of action; it passes no actual interest in the land that can be called an equitable estate in the ordinary sense, but an equitable interest of a contractual nature under the instrument consisting of a right to be registered as the owner of the interest purported to be conferred by the instrument (vide *Hogg, Registration of Titles to Land,* p. 116). As Lord Dunedin stated in *Haji Abdul Rahman v. Mohamed Hassan*[2] : "The agreement is valueless as a transfer or burdening instrument, but it is good as a contract." This contractual right may be sufficient to give a person an 'interest' in the land for the purposes of protection by restrictive entry in the register; the *claim to an interest in land* arising out of the contract is sufficient to make it a caveatable interest and to support a caveat (*In re Registration of Caveat*[3]). The whole system of caveats is founded on the principle that they exist for the protection of alleged as well as proved interests and of interests that have not yet become actual interests in land, but a caveat, being in the nature of a statutory injunction, does not in itself make a claim or right either better or worse.

As stated by *Hogg* (*op. cit.* p. 167) "the effect of an unregistered instrument which purports, but is not allowed, to give an interest in land is comparable to the effect of a licence as distinguished from a lease. In questions of priority this distinction may be of vital importance."

In my opinion, therefore, the appellant's contractual right cannot have priority so as to override the registrable interest of the 2nd, 3rd and 4th respondents.

I would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.; Das & Co.*

SIN HUAT HIN TIN MINES LTD. v. LEE YAT KAI & ORS.

[O. C. J. (Wilson J.) May 7, 1954]

[K. L. — Civil Suit No. 147 of 1954]

Advocates and Solicitors Ordinance, 1947, s. 55(2) — Statute — Rule of construction of — Whether Federal Counsel can enter appearance on behalf of Government officials.

In this case the plaintiff sued one Lee Yat Kai and the Senior Inspector of Mines, Selangor, Negri Sembilan and Malacca and the Inspector of Mines, Kuala Lumpur. The Federal Counsel entered an appearance in the action on behalf of the two Government officials who were sued in their official capacity. The plaintiff applied to the Court by way of Summons in Chambers which was adjourned into Open Court for an order that the appearance entered on behalf of the second and third defendants